

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

GUARDIANS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT, CALIFORNIA DEPARTMENT  
OF EDUCATION, CALIFORNIA  
HEALTH AND HUMAN SERVICES  
AGENCY, CALIFORNIA DEPARTMENT  
OF MENTAL HEALTH, AND LOS  
ANGELES COUNTY DEPARTMENT OF  
MENTAL HEALTH.

OAH CASE NO. 2010110312

ORDER GRANTING LOS ANGELES  
UNIFIED SCHOOL DISTRICT'S  
MOTION TO DISMISS

On November 8, 2010, Student filed a Due Process Hearing Request (complaint) against the Los Angeles Unified School District (LAUSD), California Department of Education (CDE), California Health and Human Services Agency (CHHS), California Department of Mental Health (CDMH), and Los Angeles County Department of Mental Health (LACDMH). On November 30, 2010, LAUSD filed a motion to dismiss, on the grounds that Student did not allege that LAUSD denied Student a free appropriate public education (FAPE), and that Student's claims are not ripe for adjudication. On December 6, 2010, Student filed an opposition.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the

availability of a program appropriate for a child, including the question of financial responsibility[.]) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

There is no right to file for a special education due process hearing absent an existing dispute between the parties. A claim is not ripe for resolution “if it rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all.’” (*Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662 [citations omitted].) The basic rationale of the ripeness doctrine is “to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” (*Abbott Laboratories v. Gardner* (1967) 387 U.S. 136, 148 [87 S.Ct. 1507].)

## DISCUSSION

The facts in this matter are not in dispute between Student and LAUSD. In a prior action between the parties, OAH Case No. 2010031578, the parties agreed that LAUSD would refer Student to LACDMH to conduct a mental health assessment. LAUSD made the assessment on October 13, 2010, after getting the required consent at an individualized education program (IEP) meeting. The thrust of Student’s complaint is that at the IEP meeting a LAUSD representative stated that she believed that the mental health assessment referral would just sit at LACDMH because LACDMH had informed LAUSD that it would not perform mental health assessments due to the Governor’s October 8, 2010 veto of state funding to county mental health agencies.

Student’s complaint and opposition contends that an issue exists for hearing because of the possibility that LACDMH might not provide mental health services to Student at some future date due to the uncertainty of State funding for county provided mental health services to special education students. In the complaint, Student does not allege that LACDMH rejected LAUSD’s assessment request. (Cal. Code Regs., tit. 2, § 60045, subd. (a)(1) and (a)(2).) Additionally, the complaint does not allege that LACDMH failed to timely assess Student, or that LAUSD failed to timely convene an IEP meeting to discuss LACDMH’s assessment findings within 50 days from the LACDMH’s receipt of the written consent to conduct the mental health assessment. (Cal. Code Regs., tit. 2, § 60045, subd. (d).) In fact, Student admits in his opposition brief that LACDMH conducted the assessment. Further, LAUSD convened the IEP meeting on November 30, 2010, and Student was found eligible to receive mental health services. Student has not alleged that the November 30, 2010 IEP offer is not adequate to meet his unique needs as the thrust of Student’s contention is that at some date unknown in the future that he might not receive required mental health services due to the funding dispute. Accordingly, LAUSD’s motion to dismiss as a party is granted as the matter as pled by Student is not ripe for adjudication against LAUSD.

ORDER

LAUSD's Motion to Dismiss itself as a party is granted. The matter will proceed as scheduled against the other remaining parties as presently scheduled.

Dated: December 7, 2010

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings